

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BANK OF AMERICA, N.A.,)
Plaintiff,) Case No.: 2:16-cv-00286-GMN-GWF
vs.)
SOLERA AT STALLION MOUNTAIN)
HOMEOWNERS ASSOCIATION, *et al.*,)
Defendants.)
ORDER

Pending before the Court is the Motion for Partial Summary Judgment, (ECF No. 64), filed by Plaintiff Bank of America, N.A. (“BANA”). Defendant and Counterclaimant NV Eagles, LLC (“NV Eagles”) filed a Response, (ECF No. 65), and BANA filed a Reply, (ECF No. 69).

Also pending before the Court is the Motion for Summary Judgement, (ECF No. 66), filed by NV Eagles. BANA filed a Response, (ECF No. 70), and NV Eagles filed a Reply, (ECF No. 71).

For the reasons discussed below, the Court **GRANTS** BANA's Motion for Partial Summary Judgment and **DENIES** NV Eagles' Motion for Summary Judgment.

I. BACKGROUND

This case arises from the non-judicial foreclosure sale of real property located at 6061 Fox Creek Avenue, Las Vegas, Nevada 89122 (the “Property”). (*See* Deed of Trust (“DOT”), Ex. A to BANA’s MSJ, ECF No. 64-1). On August 24, 2007, Catherine Samoska (“Borrower”) obtained a loan from BANA in the amount of \$283,386.00, secured by a DOT identifying BANA as the beneficiary. (*Id.*). The DOT was recorded on August 27, 2001. (*Id.*).

1 On September 14, 2009, upon Borrower's failure to stay current on her loan obligations,
2 BANA recorded a Notice of Default and Election to Sell Under Deed of Trust ("Notice of
3 Default") declaring all sums "immediately due and payable." (Notice of Default and Election to
4 Sell, Ex. 4 to NV Eagles' MSJ, ECF No. 66-4). BANA subsequently recorded two recissions
5 of the Notice of Default, one on March 8, 2011, and one on October 12, 2018. (*See* 2011
6 Recission, Ex. 8 to NV Eagles' MSJ, ECF No. 66-8); (2018 Recission, Ex. A to BANA's
7 Reply, ECF No. 69-1). BANA never foreclosed on the Property.

8 On November 1, 2010, upon Borrower's failure to stay current on the payment of her
9 homeowners' association assessments, Solera at Stallion Mountain Unit Owners' Association,
10 ("HOA"), initiated foreclosure proceedings on the Property through its agent, Nevada
11 Association Services, Inc. ("NAS") by recording a Notice of Delinquent Assessment Lien. (*See*
12 Notice of Delinquent Assessment Lien, Ex. B to BANA's MSJ, ECF No. 64-2). On December
13 21, 2010, NAS subsequently recorded a Notice of Default and Election to Sell. (Notice of
14 Default, Ex. C to BANA's MSJ, ECF No. 64-3). On August 22, 2011, NAS recorded a Notice
15 of Trustee Sale. (Notice of Trustee Sale, Ex. D to BANA's MSJ, ECF No. 64-4).

16 On September 12, 2011, BANA, through its counsel Miles, Bauer, Bergstrom & Winters,
17 LLP ("Miles Bauer"), sent a letter to NAS offering to pay the superpriority amount owed on the
18 HOA's lien. (Miles Bauer Aff., Ex. E to BANA's Resp., ECF No. 64-5). NAS responded with
19 a full accounting that itemized the amounts Borrower owed. (*See* Accounting, Ex. 2 to Miles
20 Bauer Aff., ECF No. 64-5). The accounting indicated that nine months of common assessment
21 fees of \$300.00, without any maintenance or nuisance or abatement charges, made the
22 superpriority portion of HOA's lien \$900.00. (*See id.*). On October 20, 2011, Miles Bauer
23 tendered \$900.00 to NAS, on BANA's behalf, to "satisfy its obligations to the HOA as a holder
24 of a first deed of trust against the [P]roperty." (Miles Bauer Letter, Ex. 3 to Miles Bauer Aff.,
25 ECF No. 64-5).

1 Despite Miles Bauer's tender, HOA, through NAS, proceeded with the foreclosure and
 2 sold the Property to Defendant Underwood Partners, LLC ("Underwood") for \$10,000.00 on
 3 April 19, 2013; Underwood recorded the foreclosure deed on May 21, 2013. (Foreclosure
 4 Deed, Ex. F to BANA's MSJ, ECF No. 64-6). On September 18, 2013, Underwood transferred
 5 the Property to NV Eagles, who recorded the deed on October 18, 2013. (Sale Deed, Ex. H to
 6 BANA's MSJ, ECF No. 64-8).

7 BANA initiated this lawsuit, asserting the following claims against NV Eagles: (1) quiet
 8 title with the requested remedy of declaratory judgment; and (2) injunctive relief. (Compl.
 9 ¶¶ 31–58, 73–79, ECF No. 1). NV Eagles filed a counterclaim also asserting a claim for
 10 declaratory judgment of quiet title against BANA. (Countercl. ¶¶ 21–26, ECF No. 7). In the
 11 instant Motions, (ECF Nos. 64, 66), BANA and NV Eagles seek summary judgment on their
 12 respective quiet title claims.

13 **II. LEGAL STANDARD**

14 The Federal Rules of Civil Procedure provide for summary adjudication when the
 15 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
 16 affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant
 17 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that
 18 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
 19 (1986). A dispute as to a material fact is genuine if there is a sufficient evidentiary basis on
 20 which a reasonable fact-finder could rely to find for the nonmoving party. *See id.* "The amount
 21 of evidence necessary to raise a genuine issue of material fact is enough 'to require a jury or
 22 judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral*
 23 *Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S.
 24 253, 288–89 (1968)). "Summary judgment is inappropriate if reasonable jurors, drawing all
 25 inferences in favor of the nonmoving party, could return a verdict in the nonmoving party's

1 favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United
2 States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A principal purpose of summary
3 judgment is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*,
4 477 U.S. 317, 323–24 (1986).

5 In determining summary judgment, a court applies a burden-shifting analysis. “When
6 the party moving for summary judgment would bear the burden of proof at trial, it must come
7 forward with evidence which would entitle it to a directed verdict if the evidence went
8 uncontested at trial. In such a case, the moving party has the initial burden of establishing
9 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.
10 Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
11 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
12 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
13 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
14 party failed to make a showing sufficient to establish an element essential to that party’s case
15 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
16 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
17 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
18 398 U.S. 144, 159–60 (1970).

19 If the moving party satisfies its initial burden, the burden then shifts to the opposing
20 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.
21 Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
22 the opposing party need not establish a material issue of fact conclusively in its favor. It is
23 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
24 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors
25 Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). However, the nonmoving party “may not rely on

1 denials in the pleadings but must produce specific evidence, through affidavits or admissible
2 discovery material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,
3 1409 (9th Cir. 1991), and “must do more than simply show that there is some metaphysical
4 doubt as to the material facts.” *Orr v. Bank of America*, 285 F.3d 764, 783 (9th Cir. 2002)
5 (internal citations omitted). “The mere existence of a scintilla of evidence in support of the
6 plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252. In other words, the
7 nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations
8 that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
9 Instead, the opposition must go beyond the assertions and allegations of the pleadings and set
10 forth specific facts by producing competent evidence that shows a genuine issue for trial. *See*
11 *Celotex Corp.*, 477 U.S. at 324.

12 At summary judgment, a court’s function is not to weigh the evidence and determine the
13 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
14 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
15 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
16 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

17 **III. DISCUSSION**

18 **A. Quiet Title**

19 BANA and NV Eagles move for summary judgment on their competing quiet title
20 claims. (BANA’s MSJ 2:1–4, ECF No. 64); (NV Eagles’ MSJ 5:4–7, ECF No. 66). BANA
21 argues that its first DOT continues to encumber the Property because it satisfied the HOA
22 superpriority lien by tendering payment of \$900.00 to NAS. (BANA’s MSJ, Argument, 3:26–
23 5:4). In contrast, NV Eagles asserts that it owns the Property free and clear of BANA’s DOT
24 because the foreclosure deed contains the required statutory recitals, providing clear title to the
25 purchaser. (NV Eagles’ MSJ 6:22–24).

Under NRS 116.3116, the holder of a first deed of trust may pay off the superpriority portion of an HOA lien to prevent the foreclosure sale from extinguishing the deed of trust. *See SFR Invs. Pool 1 v. U.S. Bank*, 334 P.3d 408, 414 (Nev. 2014). The superpriority portion of the lien consists of “the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges,” while the subpriority piece consists of “all other HOA fees or assessments.” *Id.* at 411; *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings, LLC*, 373 P.3d 66, 70–74 (Nev. 2016). “[A] first deed of trust holder’s unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust.” *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) (en banc). In addition to full tender of the superpriority amount, “valid tender must be unconditional, or with conditions on which the tendering party has a right to insist.” *Id.*

Here, BANA points to evidence indicating that at the time of NAS’s recordation of the notice of delinquent assessment lien, the monthly common assessments were \$300.00. (*See Accounting*, Ex. 2 to Miles Bauer Aff.). The statement of account also shows that HOA had not assessed any maintenance or nuisance abatement charges at the time of BANA’s payment. (*Id.*). Thus, HOA’s superpriority lien was limited to the sum of nine months’ common assessments totaling \$900.00. (*See Miles Bauer Letter*, Ex. 3 to Miles Bauer Aff.). Finally, BANA has introduced evidence that Miles Bauer, on BANA’s behalf, sent NAS a check for \$900.00, which NAS refused to accept. (*See Miles Bauer Aff.* ¶¶ 9–10). Consequently, because BANA’s payment satisfied HOA’s superpriority lien, BANA’s attempted payment cured the default as to that portion of HOA’s lien.

NV Eagles, for its part, fails to put forth evidence creating a genuine issue of fact as to BANA’s points. (*See NV Eagles’ MSJ, Statement of Facts*, 2:19–5:7). Instead, NV Eagles argues that the HOA foreclosure sale was proper and extinguished the DOT because, under NRS 116.31166, the foreclosure deed recitals are conclusive as to “(a) Default, the mailing of

1 the notice of delinquent assessment, and the recording of the notice of default and election to
 2 sell; (b) the elapsing of 90 days; and (c) The giving of notice of sale.” (*Id.* 6:25–8:7).
 3 However, the fact that certain deed recitals are accorded conclusive effect under NRS 116.3116
 4 does not conclusively defeat equitable relief in a quiet title action. *See Shadow Wood*
 5 *Homeowners Association, Inc. v. New York Community Bancorp. Inc.*, 366 P.3d 1105, 1112
 6 (Nev. 2016) (rejecting that NRS 116.31166 defeats, as a matter of law, actions to quiet title).
 7 Accordingly, the deed recitals alone do not entitle NV Eagles to summary judgment. *See id.*

8 Additionally, NV Eagles claims Nevada’s ancient mortgage statute, NRS 106.240,
 9 terminates any lien created by BANA’s DOT. NRS 106.240 provides:

10 The lien heretofore or hereafter created of any mortgage or deed of trust upon any real
 11 property, appearing of record, and not otherwise satisfied and discharged of record, shall
 12 at the expiration of 10 years after the debt secured by the mortgage or deed of trust
 13 according to the terms thereof or any recorded written extension thereof become wholly
 14 due, terminate, and it shall be conclusively presumed that the debt has been regularly
 15 satisfied and the lien discharged.

16 NV Eagles has produced evidence that on September 14, 2009, BANA accelerated the
 17 mortgage on the Property, requiring the remaining balance to become wholly due. (*See* Notice
 18 of Default and Election to Sell, Ex. 4 to NV Eagles’ MSJ). Because BANA never subsequently
 19 foreclosed on the Property, and more than ten years have passed since BANA accelerated the
 20 mortgage, NV Eagles claims that, under NRS 106.240, BANA’s DOT has been extinguished.
 21 (NV Eagles’ MSJ 10:16–19). However, the Nevada Supreme Court recently indicated that a
 22 rescission of a Notice of Default and Election to Sell recorded before the ten-year period’s
 23 expiration “effectively cancel[s] the acceleration.” *Glass v. Select Portfolio Servicing, Inc.*, No.
 24 78325, 2020 WL 3604042, at *1 (Nev. July 1, 2020).

25 In the present case, BANA rescinded its Notice of Default both on March 8, 2011, and
 26 on October 12, 2018. (*See* 2018 Rescission, Ex. A to BANA’s Reply); (2011 Recission, Ex. 8

1 to NV Eagles' MSJ).¹ As such, BANA cancelled the acceleration, and the DOT was not
 2 extinguished under NRS 106.240. *See Glass*, 2020 WL 3604042, at *1. *See also Bank of*
 3 *America N.A. v. Estrella III Homeowner's Association*, No. 2:16-cv-02835-APG-DJA, 2020
 4 WL 419004, at *3 (D. Nev. Jul. 21, 2020) (finding that a recission to a notice of default cancels
 5 the acceleration for the purposes of NRS 106.240). Therefore, the HOA's foreclosure sale was
 6 invalid to the extent that it caused the extinguishment of the DOT. While the sale remains
 7 intact, BANA's DOT continues to encumber the Property, and NV Eagles' interest is subject to
 8 this encumbrance.

9 In light of this holding, NV Eagles cannot prevail even if the Court were to find it was a
 10 bona fide purchaser for value. *See Bank of Am., N.A. c. SFR Invs. Pool 1, LLC*, 427 P.3d 113,
 11 121 (Nev. 2018) (en banc) ("Because a trustee has no power to convey an interest in land
 12 securing a note or other obligation that is not in default, a purchaser at a foreclosure sale of that
 13 lien does not acquire title to that property interest."). Accordingly, the Court grants summary
 14 judgment in favor of BANA with respect to its quiet title claim.

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16

17 ¹ NV Eagles claims that neither the 2011 Recission nor the 2018 Recission decelerated the debt. First, NV
 18 Eagles argues that the 2011 Recission was not proper because it did not explicitly decelerate the debt. (*See NV*
 19 *Eagles' MSJ* 10:5–25 (citing *Cadle Co. II, Inc. v. Fountain*, No. 49488, 2009 WL 1470032, at *2 (Nev. Feb. 26,
 20 2009) ("deceleration, when appropriate, must be clearly communicated by the lender/holder of the note to the
 21 obligor"))). However, the 2011 Recission states that BANA does "rescind, cancel and withdraw said Declaration
 22 of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale;" the Nevada Supreme
 23 Court found almost identical language to be an appropriate recission and deceleration of a debt. *See Glass v.*
 24 *Select Portfolio Servicing, Inc.*, No. 78325, 2020 WL 3604042, at *1 (Nev. July 1, 2020) (language that the party
 25 "does hereby rescind, cancel and withdraw the Notice of Default and Election to Sell" cancelled the
 acceleration). Second, while NV Eagles does not dispute that the 2018 Recission explicitly decelerated the debt,
 NV Eagles asserts that the 2018 Recission is still inadmissible evidence because BANA did not provide the
 document during discovery in violation of Federal Rules of Civil Procedure 26(a), 26(e), and 37(c). (*See*
generally NV Eagles' Reply, ECF No. 71). However, because the 2018 Recission was recorded with the Clark
 County Recorder and is a publicly available document, the Court takes judicial notice of the 2018 Recission. *See*
Fed. R. Evid. 201 (Judicial Notice of Adjudicative Facts); *Disabled Rights Action Committee v. Las Vegas*
Events, Inc., 375 F.3d 861, n.1 (9th Cir. 2004) ("[the court] may take judicial notice of the records of state
 agencies and other undisputed matters of public record"); (2018 Recission, Ex. A to BANA's Reply, ECF No.
 69-1). As such, both the 2011 and 2018 Recissions indicate that BANA rescinded its Notice of Default,
 cancelling the acceleration.

1 **B. BANA's Remaining Claim for Injunctive Relief**

2 With regards to BANA's request for preliminary injunction pending a determination by
3 the Court concerning the parties' respective rights and interest, the Court's grant of summary
4 judgment for BANA moots this claim, and it is therefore dismissed. (*See* Compl. ¶¶ 73–79).

5 **IV. CONCLUSION**

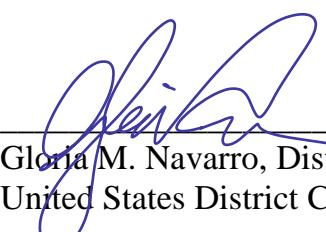
6 **IT IS HEREBY ORDERED** that BANA's Motion for Partial Summary Judgment,
7 (ECF No. 64), is **GRANTED**.

8 **IT IS FURTHER ORDERED** that NV Eagles' Motion for Summary Judgement, (ECF
9 No. 66), is **DENIED**.

10 **IT IS FURTHER ORDERED** that BANA's claim for injunctive relief is **DISMISSED**
11 **with prejudice.**

12 The Clerk of the Court is ordered to close the case.

13 **DATED** this 11 day of January, 2021.

14 
15 Gloria M. Navarro, District Judge
16 United States District Court